

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.610 of 2015

S.Ramesh

..Appellant/Applicant

Vs.

1.M.Babu

2.M.Manickam

3.M/s.New India Assurance Company Ltd.,
Divisional Office, Premier Complex,
Junction Yercaud Main Road,
Alagapuram, Salem - 16. ...Respondents/Opposite Parties
Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 30 of the Workmen's Compensation Act, 1923, against the order dated 12.03.2013 made in W.C.No.225 of 2008 on the file of the Deputy Commissioner of Labour, Salem.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : Mrs.S.K.Sumathy for RR1 & 2

J U D G M E N T

The Award dated 12.03.2013 in W.C.No.225 of 2008 is under challenge in the present civil miscellaneous appeal.

2. The claimant is the appellant. The appellant states that he was a workman employed in the first opposite party as a driver in a lorry bearing Registration No.TN-30-F-1119. On 23.10.2007 at about 2.30 a.m., the petitioner sustained grievous injury on account of the accident during the course of the employment. Thus, he filed claim petition under the provisions of the employees compensation Act.

3. The Deputy Commissioner of Labour adjudicated the issues with reference to the documents and evidence and passed an award granting compensation of Rs.3,38,789/- along with interest at the rate of 12% as prescribed in the statute.

4. The learned counsel for the appellant mainly contended that the assessment of disability as 70% by the Deputy

Commissioner of Labour is inadequate. The petitioner lost his right leg and his right leg was amputated. Therefore, he is entitled for 100% disability and accordingly, the compensation is to be enhanced. The learned counsel for the appellant is of the opinion that the appellant is a driver and due to amputation of his right leg, he is unable to perform his duties as driver. Therefore, he has to be treated as 100% disability.

5. The concept of 100% disability and the assessment of disability with reference to the accident are clearly stipulated in the statute itself. Schedule 2 of the Employees Compensation Act, 1923, contemplates that loss of earning capacity with reference to disability sustained by the victims as far as amputation below hip with stump exceeding 12.70 cms in length measured from tip of great trochanter but not beyond middle thigh as remains as 70%.

6. In the present case, the Deputy Commissioner of Labour fixed the disability as 70% with reference to the statute and therefore, this Court cannot interfere with the compensation granted by the Deputy Commissioner of Labour.

7. The learned counsel for the appellant is of the opinion that beyond the prescription in the statute, the other aspects regarding the performance of a particular duty is to be considered.

8. This Court is of the considered opinion that any application filed under the provisions of the Employees Compensation Act, dealt with in accordance with the provisions of the Act and this Court cannot exercise its discretion for the purpose of enhancing the compensation and such enhancement would lead to bad precedents. Once the statute prescribes particular mode of compensation to be granted, is to be followed scrupulously.

9. In these circumstances, this Court has no hesitation in arriving at the conclusion that the Deputy Commissioner of Labour has rightly fixed the disability as 70% and granted compensation of Rs.3,38,789/-, along with interest at the rate of 12% as per the statute and the same is to be confirmed. However, it is clarified that the Deputy Commissioner of Labour granted the interest at the rate of 12% per annum in the event of not depositing the compensation amount within a period of 30 days. Such condition imposed is in violation of Section 4(A) of the Employees Compensation Act. The interest is to be paid with effect from the date of the accident. Accordingly, the award stands modified to that extent.

10. Thus, the appellant is entitled for the interest at the rate of 12% per annum from the date of the accident. Accordingly, the amount of compensation stands confirmed. The interest at the rate of 12% per annum is directed to be paid

from the date of the accident.

11. In view of the facts and circumstances, the award dated 12.03.2013 in W.C.No.225 of 2008, stands modified and C.M.A.No.610 of 2015 stands allowed in part. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

gsk

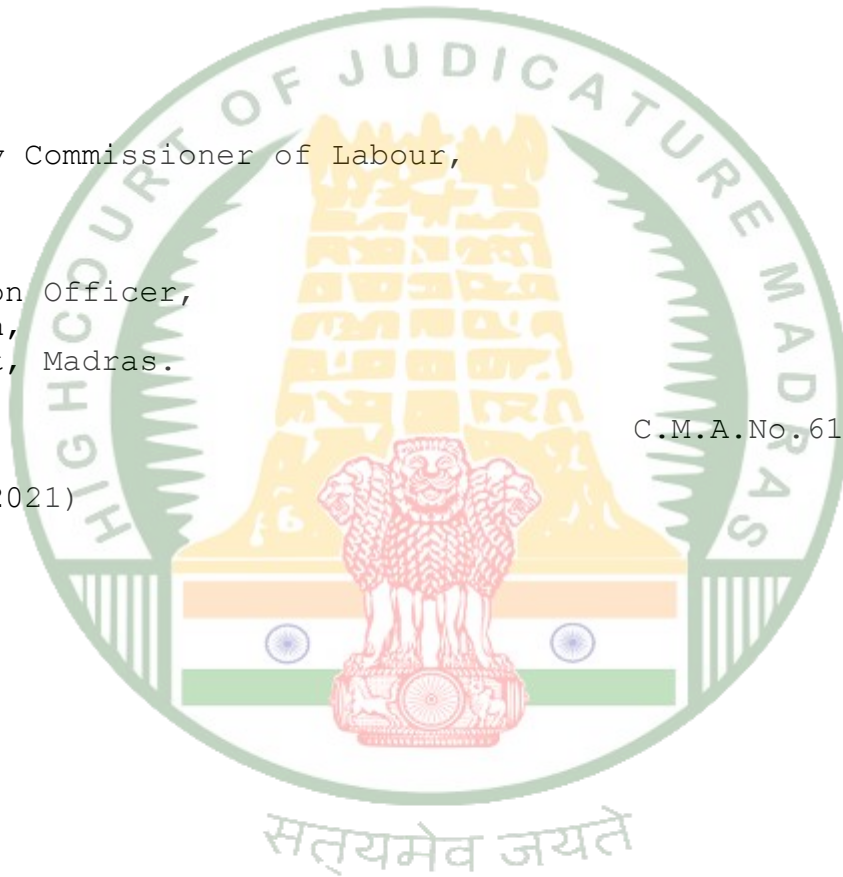
To

The Deputy Commissioner of Labour,
Salem.

Copy to:
The Section Officer,
VR Section,
High Court, Madras.

AJS (CO)
CB (26/02/2021)

C.M.A.No.610 of 2015



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